

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1161

Introduced by Assembly Member Soto

February 25, 1999

An act to amend ~~Section 14006.3~~ *Sections 14006.3 and 14006.4* of the Welfare and Institutions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, as amended, Soto. Medi-Cal: nursing facilities.

Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health care services. Services provided under the Medi-Cal program include skilled nursing and intermediate care facility services provided by nursing facilities.

Existing law requires the department *and any nursing facility*, at the time of either application for Medi-Cal benefits or of the assessment of the resources of a married couple when one spouse is institutionalized, prior to admitting any person, to provide a clear and simple statement, in writing, to the applicant or recipient, to his or her spouse, and to his or her responsible relative, explaining how Medi-Cal eligibility requirements affect their separate and community property.

This bill would no longer require this statement to be provided to a responsible relative, but would require it to be provided to the legal representative *or agent, if any*, of the

applicant or recipient. It would also ~~require revise~~ the statement to explain ~~what assets are exempt and nonexempt from consideration in determining Medi-Cal eligibility, under what circumstances the interest in a home may be transferred, and provisions relating to the community spouse resource allowance and the monthly minimum maintenance needs allowance~~ the asset and income requirements of the Medi-Cal program including, but not limited to, certain exempt assets, certain protections against spousal impoverishment, and certain circumstances under which an interest in a home may be transferred without affecting Medi-Cal eligibility.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 14006.3 of the Welfare and~~
2 SECTION 1. It is the intent of the Legislature to
3 update existing law so that the State Department of
4 Health Services and each nursing facility are required to
5 provide all incoming nursing facility residents and their
6 representatives with an accurate summary of the law
7 governing Medi-Cal reimbursement for nursing facility
8 care.
9 SEC. 2. Section 14006.3 of the Welfare and Institutions
10 Code is amended to read:
11 14006.3. The department, at the time of application or
12 the assessment pursuant to Section 14006.6, and any
13 nursing facility ~~shall~~ enrolled as a provider in the
14 Medi-Cal program, prior to admitting any person, shall
15 provide a clear and simple statement, in writing, in a form
16 and language specified by the department, to that person,
17 and that person's spouse ~~and responsible relative which,~~
18 legal representative, or agent, if any, that explains ~~how~~
19 ~~Medi-Cal eligibility requirements affect their separate~~
20 ~~and community property~~ the asset and income
21 requirements of the Medi-Cal program including, but not
22 limited to, certain exempt assets, certain protections
23 against spousal impoverishment, and certain

1 *circumstances under which an interest in a home may be*
2 *transferred without affecting Medi-Cal eligibility.*

3 *SEC. 3. Section 14006.4 of the Welfare and Institutions*
4 *Code is amended to read:*

5 14006.4. (a) The statement required by Sections
6 14006.2 and 14006.3 shall be in the following form:

7
8 “NOTICE REGARDING SEPARATE AND
9 COMMUNITY PROPERTY AND ELIGIBILITY FOR
10 MEDI-CAL STANDARDS FOR MEDI-CAL
11 ELIGIBILITY
12

13 If you or your spouse is in or is entering Long-Term
14 Care a nursing facility, read this important message!

15 You ~~both~~ or your spouse do not have to use all your
16 resources, such as savings, before Medi-Cal might help
17 pay for all or some of the long-term care costs of a nursing
18 facility.

19 You should be aware of the following to take advantage
20 of ~~this provision~~ these provisions of the law:

21 If you and your spouse have a written property
22 agreement (Interspousal Agreement) dividing your
23 community property into equal shares, only the spouse in
24 long-term care has to spend his or her resources down to
25 the Medi-Cal property limit before Medi-Cal might help
26 pay for nursing home costs. The at-home spouse's share
27 of the resources does not have to be used.

28 Even if you do not have a written agreement, the
29 county welfare department will automatically divide
30 your community property for Medi-Cal purposes at the
31 time the long-term care spouse applies for Medi-Cal. This
32 automatic division is computed as of the date the spouse
33 entered long-term care.

34 A spouse in long-term care may transfer all his or her
35 interest in the home to the at-home spouse without
36 affecting Medi-Cal eligibility.

37 The Medi-Cal program assumes that all of a married
38 couple's income is community income, so it can be
39 divided into equal shares when one spouse is in long-term
40 care. However, if the spouse at home receives more than

~~1 half of the couple's community property income in his or
2 her own name, the spouse at home may keep the larger
3 share.~~

UNMARRIED RESIDENT

An unmarried resident is financially eligible for Medi-Cal benefits if he or she has less than (insert amount of individual's resource allowance) in available assets. A home is an exempt asset and is not considered against the asset limit, as long as the resident states on the Medi-Cal application that he or she intends to return home. Clothes, household furnishings, irrevocable burial plans, burial plots, and an automobile are examples of other exempt assets.

If an unmarried resident is financially eligible for Medi-Cal reimbursement, he or she is allowed to keep from his or her monthly income a personal allowance of (insert amount of personal needs allowance) plus the amount of health insurance premiums paid monthly. The remainder of the monthly income is paid to the nursing facility as a monthly deductible called the "Medi-Cal share of cost."

MARRIED RESIDENTS

If one spouse lives in a nursing facility, and the other spouse does not live in a nursing facility, the Medi-Cal program will pay some or all of the nursing facility costs as long as the couple together does not have more than (insert amount of Community Spouse Resource Allowance plus individual's resource allowance) in available assets. The couple's home will not be counted against this (insert amount of Community Spouse Resource Allowance plus individual's resource allowance), as long as one spouse or a dependent relative, or both, lives in the home, or the spouse in the nursing facility states on the Medi-Cal application that he or she intends to return to the couple's home to live.

1 *If a spouse is eligible for Medi-Cal payment of nursing*
2 *facility costs, the spouse living at home is allowed to keep*
3 *a monthly income of at least his or her individual monthly*
4 *income or (insert amount of Minimum Monthly*
5 *Maintenance Needs Allowance), whichever is greater. Of*
6 *the couple's remaining monthly income, the spouse in the*
7 *nursing facility is allowed to keep a personal allowance of*
8 *(insert amount of personal needs allowance) plus the*
9 *amount of health insurance premiums paid monthly. The*
10 *remaining money, if any, generally must be paid to the*
11 *nursing facility as the Medi-Cal share of cost. The*
12 *Medi-Cal program will pay remaining nursing facility*
13 *costs.*

14 *Under certain circumstances, an at-home spouse can*
15 *obtain an order from an administrative law judge that will*
16 *allow the at-home spouse to retain additional resources or*
17 *income. Such an order can allow the couple to retain*
18 *more than (insert amount of Community Spouse*
19 *Resource Allowance plus individual's resource*
20 *allowance) in available resources, if the income that*
21 *could be generated by the retained resources would not*
22 *cause the total monthly income available to the at-home*
23 *spouse to exceed (insert amount of Monthly Maintenance*
24 *Needs Allowance). Such an order also can allow the*
25 *at-home spouse to retain more than (insert amount of*
26 *Monthly Maintenance Needs Allowance) in monthly*
27 *income, if the extra income is necessary "due to*
28 *exceptional circumstances resulting in significant*
29 *financial duress."*

30 *An at-home spouse also may obtain a court order to*
31 *increase the amount of income and resources that he or*
32 *she is allowed to retain, or to transfer property from the*
33 *spouse in the nursing facility to the at-home spouse. You*
34 *should contact a knowledgeable attorney for further*
35 *information regarding court orders.*

36 *The paragraphs above do not apply if both spouses live*
37 *in a nursing facility and neither previously has been*
38 *granted Medi-Cal eligibility. In this situation, the spouses*
39 *may be able to hasten Medi-Cal eligibility by entering*
40 *into an agreement that divides their community*

1 *property. The advice of a knowledgeable attorney should*
2 *be obtained prior to the signing of this type of agreement.*

3 *Note: For married couples, the resource limit ((insert*
4 *amount of Community Spouse Resource Allowance plus*
5 *individual's resource allowance) in (insert current year))*
6 *and income limit ((insert amount of Minimum Monthly*
7 *Maintenance Needs Allowance) in (insert current year))*
8 *generally increase a slight amount on January 1 of every*
9 *year.*

10 11 *TRANSFER OF HOME* 12

13 *A transfer of a property interest in a resident's home*
14 *will not cause ineligibility for Medi-Cal reimbursement if*
15 *both of the following conditions are met:*

16 *(a) At the time of transfer, the recipient of the*
17 *property interest states in writing that the resident would*
18 *have been allowed to return to the home at the time of*
19 *the transfer, if the resident's medical condition allowed*
20 *him or her to leave the nursing facility.*

21 *(b) The home is transferred to one of the following*
22 *individuals:*

23 *(1) The resident's spouse.*

24 *(2) The resident's minor or disabled child.*

25 *(3) A sibling of the resident who has an equity interest*
26 *in the home, and who resided in the resident's home for*
27 *at least one year immediately before the resident began*
28 *living in institutions.*

29 *(4) A son or daughter of the resident who resided in*
30 *the resident's home at least two years before the resident*
31 *began living in institutions, and who provided care to the*
32 *resident that permitted the resident to remain at home*
33 *longer.*

34 *This is only a brief description of the Medi-Cal*
35 *eligibility rules, for more detailed information, you should*
36 *call your county welfare department. You will probably*
37 *want to consult with the local branch of the state*
38 *long-term care ombudsman, an attorney, or a legal*
39 *services program for seniors in your area.*
40

1 I have read the above notice and have received a copy.

2 Dated: _____ Signature: _____”

3
4 (b) The statement required by subdivision (a) shall be
5 printed in at least 10-point type, shall be clearly separate
6 from any other document or writing, and shall be signed
7 by the person to be admitted and that person’s spouse,
8 and any responsible relative.

9 (c) Any nursing facility that willfully fails to comply
10 with this section shall be subject to a class “B” citation, as
11 defined by Section 1424 of the Health and Safety Code.

12 (d) The department may revise this statement as
13 necessary to maintain its consistency with state and
14 federal law.

15 ~~(e) (1) This section shall apply to institutionalized~~
16 ~~spouses only if Title XIX of the federal Social Security Act~~
17 ~~(42 U.S.C. Sec. 1396 et seq.) is amended to authorize the~~
18 ~~consideration of state community property law in~~
19 ~~determining eligibility under this chapter, or the federal~~
20 ~~government authorizes the state to apply community~~
21 ~~property laws in making that determination.~~

22 ~~(2) The department shall report to the appropriate~~
23 ~~committees of the Legislature upon the occurrence of the~~
24 ~~amendment of federal law or the receipt of federal~~
25 ~~authorization to apply community property law as~~
26 ~~specified in paragraph (1).~~

27 ~~Institutions Code is amended to read:~~

28 ~~14006.3. The department, at the time of application or~~
29 ~~the assessment pursuant to Section 14006.6, and any~~
30 ~~nursing facility shall, prior to admitting any person,~~
31 ~~provide a clear and simple statement, in writing, in a form~~
32 ~~and language specified by the department, to that person~~
33 ~~and to that person’s spouse, if any, and to that person’s~~
34 ~~legal representative or agent, if any, that explains how~~
35 ~~Medi-Cal eligibility requirements affect their property~~
36 ~~including, but not limited to, what assets are exempt and~~
37 ~~nonexempt from consideration in determining Medi-Cal~~
38 ~~eligibility, under what circumstances the interest in a~~
39 ~~home may be required to be transferred, and provisions~~

- 1 ~~relating to the community spouse resource allowance and~~
- 2 ~~the monthly minimum maintenance needs allowance.~~

O

